S.B.Cr.Misc. Bail App. No.4306/2007
(Banshi Vs. State)

Date of order : 25th September, 2007.

HON'BLE MR.H.R.PANWAR, J.

Mr. Suresh Kumbhat for the petitioner.

Mr. Ashok Upadhyay, Public Prosecutor.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned as well as the challan papers.

It has been contended by learned counsel for the petitioner that the petitioner was granted Patta by the Narcotics Bureau to crop Opium in Khasra No.702 of village Hadiji Ka Pipaliya, District Chittorgarh and the alleged Opium, which has been recovered by the police, was cultivated under the valid Patta.

Learned Public Prosecutor submitted that though the petitioner was granted Patta for cultivating Opium in 10 Aari. The measurement of Aari is, half bigha per Aari. The case as set up by the prosecution is that the petitioner instead of cultivating at Khasra No.702, cultivated the Opium on the land which is of temple of Lord Vishnu.

I have carefully gone through the statement of Iswardas, who is presently worshiping at temple of Lord Vishnu, who has stated

that the petitioner got some document executed by his father Ramdas for the land and on strength of that document, the petitioner is in possession of the land which is belonging to the Lord Vishnu and had been cultivating Opium for last many years. Similar is the statements of Dinesh and Tulsi Ram, who are village head and had accompanied officers of Narcotics Bureau for verifying the land sought to be cultivated under Patta. The village head verified the land and also inspected the land and ultimately crop of Opium is made available to the Department in presence of these village head. All these witnesses have stated that for many years the petitioner is cultivating Opium under Patta on the land which ultimately reveals that the said land belonging to temple of Lord Vishnu. The prosecution in its investigation failed to point out that the petitioner is cultivating on Khasra No.702 and it was admitted that Patta was granted for Khasra No.702 whereas no such Khasra is in existence. The petitioner has been cultivating Opium on the land of temple Lord Vishnu for last many years as stated by the witnesses. It is not the case of the prosecution that the petitioner is also cultivating Opium on Khasra No.702. Thus, prima facie, it appears that the petitioner was cultivating Opium under the valid Patta.

Without expressing any opinion on the merit of the case which may prejudice case of the either side, however, looking to the facts and circumstances of the case and having considered the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Banshi s/o Bhera be released on bail in CR No.29/2007 P.S. Rathajana, District Chittorgarh, provided he executes a personal bond for a sum of Rs.20,000/- with two sound and solvent sureties in the sum of Rs.10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR), J.

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